

Unrelated income: sale of advertising. The sale of advertising by volunteers of an exempt organization, which raises funds for an exempt symphony orchestra and publishes an annual concert book distributed at the orchestra's annual charity ball, is not a business regularly carried on in determining unrelated income under section 512 of the Code; Rev. Rul. 73-424 distinguished.

Advice has been requested whether the sale of advertising in the situation described below is regularly carried on within the meaning of section 512 of the Internal Revenue Code of 1954.

The organization involved is exempt from Federal income tax under section 501(c)(3) of the Code. A major purpose of the organization is to raise funds for a tax exempt symphony orchestra. The organization's activities are substantially similar to the activities described in Rev. Rul. 75-200, page 163.

In addition, as part of this organization's activities, it publishes an annual concert book which is distributed at the orchestra's annual charity ball. A volunteer committee designs each anniversary concert book and solicits advertising for it. The book always contains photographs of performing musicians, a short history of the orchestra and notes about past and future performances. Many national and local business organizations pay substantial sums for advertising in the concert book.

Subject to certain exceptions and limitations not here relevant, section 512(a)(1) of the Code provides that the term 'unrelated business taxable income' means the gross income derived by any organization from any unrelated trade or business regularly carried on by it, less allowable deductions directly connected with conducting such a trade or business.

Subject to certain here unimportant qualifications, section 513(a) of the Code defines the term 'unrelated trade or business' as any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its exempt functions.

Section 1.513-1(c)(1) of the Income Tax Regulations provides in substance that to determine whether trade or business is 'regularly carried on,' one must look to the frequency and continuity with which the activities productive of the income are conducted and the manner in which they are pursued.

Section 1.513-1(c)(2)(ii) of the regulations provides in part that in determining whether or not intermittently conducted activities are regularly carried on, the manner of conduct of the

activities must be compared with the manner in which commercial activities are normally pursued by nonexempt organizations. It also includes the further substantive rule that, in general, exempt organization business activities which are engaged in only discontinuously or periodically will not be considered regularly carried on if they are conducted without the competitive or promotional effort typical of commercial endeavors.

Section 1.513-1(c)(2)(iii) of the regulations provides as follows:

Certain intermittent income producing activities occur so infrequently that neither their recurrence nor the manner of their conduct will cause them to be regarded as trade or business regularly carried on. For example, income producing or fund raising activities lasting only a short period of time will not ordinarily be treated as regularly carried on if they recur only occasionally or sporadically.

Furthermore, such activities will not be regarded as regularly carried on merely because they are conducted on an annually recurrent basis. Accordingly, income derived from the conduct of an annual dance or similar fund raising event for charity would not be income from trade or business regularly carried on.

The distribution of the concert book by the organization as a part of its annual fund-raising dance brings the subject income producing activities within the cited sections of the regulations. The advertising solicitation, largely carried on by the volunteer committee, is intermittent activity that does not continue for an extended period in any instance. It further appears that all such activities are conducted as integral parts of an annual fund-raising event for charity within the meaning of section 1.513-1(c)(2)(iii) of the regulations. Accordingly, the sale of advertising is not regularly carried on within the meaning of section 512 of the Code.

The facts here are readily distinguishable from those in Rev. Rul. 73-424, 1973-2 C.B. 190. The activities there held to have been regularly carried on by an exempt organization included the conduct of a commercially controlled and directed advertising solicitation campaign, the intensive phase of which was ordinarily continued for about three months of each year. Moreover, the distribution of the annual publications containing such advertising was not effected at any fund-raising event and did not tie in with any other organization activity of that general kind.